

(2007) 07 GAU CK 0002**Gauhati High Court****Case No:** Writ Petition(C) No. 638 of 2005

Khetoli

APPELLANT

Vs

State of Nagaland And Ors.

RESPONDENT

Date of Decision: July 19, 2007**Acts Referred:**

- Nagaland Municipal Council Act, 2001 - Section 12, 12, 9, 9

Citation: (2008) 4 GLR 362**Hon'ble Judges:** D.Biswas, J and H.Baruah, J**Bench:** Division Bench**Advocate:** B.Goyal, C.Jamir, M.M.Kataki, N.N.Jamir, R.P.Sarma, Advocates appearing for
Parties**Judgement**

1. Heard Mrs. B. Goyal, learned counsel for the writ petitioner and also Ms. T. Khr, learned State counsel.
2. This petition has been filed challenging the vires of section 9 and 12 of the Nagaland Municipal Act, 2001 and for a declaration that the provisions of the said section be declared as illegal and null and void, being contrary to the mandate of the Constitutions. The provisions of sections 9 and 12 are quoted herein below for ready reference :

"9. Composition of Municipal Council. (1) Every Municipal Council shall be elected, exofficio and nominated members.

(2) the Government may, by notification, divide the municipal council area into territorial constituencies to be known as wards for the purpose of filling up the seats in the Municipal Council by direct election.

(3) Members of the State Legislative Assembly representing Legislative Assembly Constituencies which comprise wholly or partly the municipal council area shall exofficio members.

(4) The Government shall, by notification nominate such number of members, not exceeding onefifth of the elected members, from amongst the persons having special knowledge or experiences in Municipal Administration.

12. Election of Chairperson I Deputy Chairperson. (1) The Municipal Council shall elect one of its elected members to be the Chairperson in the manner as may be prescribed in this behalf.

(2) The Municipal Council may also elect one of its elected members to be Deputy Chairperson in the manner under subsection (1).

(3) the election under subsection 1 & 2 shall be conducted at a meeting of Municipal Council to be convened immediately after the meeting held for making and subscribing oath or affirmation by the members but not later than 6 months from the date on which the election of members is notified by the State Election Commission.

(4) the meeting for election of Chairperson and Deputy Chairperson of Municipal Council shall be convened and presided over by the Deputy Commissioner.

(5) If during the election of Chairperson or Deputy Chairperson, as the case may be, there is equality of votes between the candidates and the addition of vote would entitle one of such candidates to be elected as Chairperson or Deputy Chairperson, as the "case may be the Presiding Officer shall decide between such candidates by lot to be drawn in their presence in such manner, as may be prescribed and the candidate on the lot fall, shall be deemed to have received an additional vote.

(6) The Chairperson and Deputy Chairperson shall enter upon their duties as such, immediately after their elections."

3. Mrs. Goyal, learned counsel relied upon the provisions of article 243T of the Constitution, particularly the provisions incorporated in clause (3) in order to bring home their contention that the provisions incorporated in sections 9 and 12 of the Nagaland Municipal Act, 2001 are in conflict with the constitutional provisions and, hence, are liable to be struck down.

4. During the course of argument, it transpired that the State of Nagaland has already amended the relevant provisions of the Act of 2001 by enacting the Nagaland Municipal (First Amendment) Act, 2006, wherein the provisions for reservation of S/C, S/T and women have been made. In view of this development, this writ petition appears to have become infructuous. Accordingly, the petition is dismissed as infructuous.

5. It is expected that the State of Nagaland shall take all steps for constitution of the Municipality in accordance with the provisions of the Act of 2006 at an early date.